

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil

All Proceedings Assigned to Hon. Ronald H. Sargis

Modesto, California

June 13, 2017, at 10:00 a.m.

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1.     [17-90220-D-13](#)     BRIAN HAYES     CONTINUED MOTION FOR RELIEF  
          SSA-1           Brian Haddix     FROM AUTOMATIC STAY  
  4-6-17 [\[18\]](#)  
  
IRMA EDMONDS VS.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Irma Edmonds ("Plaintiff-Trustee"), the Chapter 7 Trustee in the Tirzah Hamilton Bankruptcy Case No. 16-90513 ("Hamilton Bankruptcy"), seeks relief from the automatic stay to allow *Edmonds v.*

*Hayes, et al*, Case No. 16-09012 (“Adversary Proceeding”) being prosecuted in the Hamilton Bankruptcy case. In that Adversary Proceeding, Brian Hayes, the Debtor in this bankruptcy case, (“Debtor-Hayes”) is a defendant, with the trustee alleging that Ms. Hamilton, identified as Mr. Hayes’s girlfriend, transferred property to Debtor-Hayes that is avoidable as a fraudulent conveyance pursuant to 11 U.S.C. § 549.

In the Hamilton Bankruptcy case, Tirzah Hamilton stated under penalty of perjury on her statement of financial affairs that she made no transfers of property to any person, other than in the ordinary course of business. 16-90513; Statement of Financial Affairs Question 18, Dckt. 1. On her bankruptcy petition Tirzah Hamilton states under penalty of perjury that she lives at 2401 Walnut Park Drive, Modesto, California. *Id.*, p. 2.

Plaintiff-Trustee has provided the Declaration of Steven Altman to introduce evidence to authenticate the documents upon which it bases the claim against Debtor-Hayes.

The Altman Declaration states that the Adversary Proceeding was filed on August 24, 2016. Discovery was commenced in the Adversary Proceeding, including a Request for Admissions that was served on January 27, 2017, and a Request for Production of Documents that was served on February 3, 2017.

The Motion also seeks relief to pursue a discovery motion against pursuant to Federal Rule of Bankruptcy Procedure 7037 and Federal Rule of Civil Procedure 37.

## **MAY 2, 2017 HEARING**

At the hearing, the court continued the matter to 10:00 a.m. on June 13, 2017. Dckt. 32.

## **DEBTOR-HAYES’S OPPOSITION**

Debtor-Hayes filed an Opposition on May 23, 2017. Dckt. 40. Debtor-Hayes asserts that Movant has not presented any arguments or evidence to support relief under 11 U.S.C. § 362(d)(1) & (2). Debtor-Hayes argues that Plaintiff-Trustee’s assertion that there is cause for relief because the filing of this bankruptcy case frustrates Plaintiff-Trustee’s adversary proceeding in another bankruptcy case and that property in Debtor-Hayes’s bankruptcy case belongs to another bankruptcy estate are insufficient arguments.

Debtor-Hayes also argues that Plaintiff-Trustee has not provided evidence that there is a lack of equity in the property in this case such to support a required showing under 11 U.S.C. § 362(d)(2). Debtor-Hayes argues that Plaintiff-Trustee must believe there is equity in the property because she is pursuing a claim of fraudulent conveyance in the Adversary Proceeding.

Debtor-Hayes complains that Plaintiff-Trustee has not shown any reason why a claim cannot be filed in this case, instead of seeking relief from the stay. Debtor-Hayes believes that Plaintiff-Trustee has sought relief from the stay solely to “opt out” of the Chapter 13 process.

## **PLAINTIFF-TRUSTEE'S REPLY**

Plaintiff-Trustee filed a Reply on May 25, 2017. Dckt. 43. Plaintiff-Trustee argues that Debtor-Hayes is attempting to use this bankruptcy case to defeat any fraudulent conveyance claim asserted by Plaintiff Trustee in the Adversary Proceeding. Plaintiff-Trustee notes that Debtor-Hayes proposes to pay nothing to creditors in this case, while fully exempting the property that Plaintiff-Trustee alleges was fraudulently conveyed. Plaintiff-Trustee argues that the exemption is improper because the property is subject to the Adversary Proceeding.

## **DEBTOR-HAYES'S DECLARATION**

Debtor-Hayes filed a Declaration on May 30, 2017. Dckt. 47. Debtor-Hayes asserts that he did not transfer the property that Movant asserts is subject to the Adversary Proceeding.

## **DISCUSSION**

The court may grant relief from stay for cause when it is necessary to allow litigation in another forum. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

### **Nature of Adversary Proceeding in Hamilton Bankruptcy Case**

In the Hamilton Bankruptcy case the Plaintiff-Trustee has commenced the Adversary Proceeding to assert that the estate’s rights and interests in real property. In his declaration Debtor-Hayes states that he did not transfer the real property at issue. Declaration, Dckt. 47. However, a transfer by Debtor-Hayes is not at issue, but a transfer to Debtor-Hayes. It may be in his declaration Debtor-Hayes “admits” that the property was transferred to him.

Whether the property is property of the Hamilton bankruptcy estate is an issue of exclusive federal jurisdiction. 28 U.S.C. § 1334(e). While Debtor-Hayes cites to 11 U.S.C. § 522(g), the issue is not whether Debtor-Hayes transferred the property to someone, but whether if it was transferred to Debtor-

Hayes, was such transfer to subject to the Plaintiff-Trustee's and the Hamilton bankruptcy estate's interests. If so, then that would be all that Debtor-Hayes, and now Debtor-Hayes's bankruptcy estate, has.

Debtor-Hayes's contention as to why the Plaintiff-Trustee cannot prosecute the rights of that estate is that if Debtor-Hayes is the recipient of a fraudulent conveyance, the Plaintiff-Trustee's rights and interests in the property can be defeated by Debtor-Hayes's 0% dividend bankruptcy plan. That presumes that the Plaintiff-Trustee and Hamilton bankruptcy estate have only a monetary claim against Debtor-Hayes, and not an interest in the property itself.

11 U.S.C. § 548 provides that the court may avoid a fraudulent conveyance of property. In describing the general purpose underlying this provide, the Court of Appeals stated:

The rules established in the avoidable preference cases are applicable to a certain extent in the context of fraudulent transfers. The purpose of avoidance of both types of transfers is to prevent a debtor from diminishing, to the detriment of some or all creditors, funds that are generally available for distribution to creditors. Consequently, any funds under the control of the debtor, regardless of the source, are properly deemed to be the debtor's property, and any transfers that diminish that property are subject to avoidance.

*Nordberg v. Carolina Sanchez et al. (In re Chase & Sanborn Corp.)*, 813 F.2d 1177, 1181 (11th Cir. 1987).

When the transfer is avoided, the transfer is preserved for the benefit of the bankruptcy estate itself, not for the debtor (and any exemption that could have been claimed) him or herself. 11 U.S.C. § 553 and § 522(g) address the right to Hamilton to claim an exemption in the Hamilton bankruptcy case if the transfer to Debtor-Hayes in this case is avoided.

In the event that the transferee has done something to the transferred property to impair its value if avoided, then 11 U.S.C. § 550 allows for an alternative judgment for the value of the property transferred. That the Plaintiff-Trustee wants the property itself rather than a monetary judgment that would be paid \$0.00 in Debtor-Hayes's bankruptcy case is neither shocking or surprising. It also is not adverse to Debtor-Hayes's rights and interests by virtue of the transfer, which is subject to the Trustee's rights to avoid the transfer as a matter of federal bankruptcy law.

## **Review of Bankruptcy Case Filings**

On his Schedule I, Debtor-Hayes states that he is unemployed. Dckt. 28 at 22. His income is \$1,800.00 per month in unemployment benefits. *Id.* at 23. He then lists additional income of \$750.00 as a contribution from "Children's Mother." *Id.* The identity of "Children's Mother" is not disclosed on Schedule I.

On Schedule J, Debtor-Hayes lists two dependents, daughters ages 5 and 6. *Id.* at 24. On Schedule J, Debtor-Hayes lists the following expenses:

A. Rent/Mortgage.....\$1,052.00

B.	Home Maintenance.....	\$0.00
C.	Property/Renters Insurance.....	\$0.00
D.	Property Taxes.....	\$0.00
E.	Food for One Adult and Two Children...\$	250.00
F.	Clothing and Laundry.....	\$0.00
G.	Transportation.....\$	125.00

*Id.* at 25. This allows Debtor-Hayes to have \$125.00 per month to fund the Plan. For the thirty-six months of the Plan, that would generate \$4,500 in funds, just enough to pay Debtor-Hayes’s Counsel \$4,000.00 in legal fees for filing and prosecuting this case and the Chapter 13 Trustee fees (estimated to be \$315.00 based on a 7% Trustee fee).

Debtor-Hayes lists his residence as 2401 Walnut Park Drive, Modesto, California. Petition, Dckt. 1. Tirzah Hamilton, who the Plaintiff-Trustee asserts made the transfer to Debtor-Hayes, also lists her address as 2401 Walnut Park Drive Modesto, California—the same address as Debtor-Hayes lists. 16-90513; Petition, Dckt. 1.

On her Schedule I, Tirzah Hamilton lists having income of only \$800.00 per month, the source being unemployment compensation. *Id.* at 27. On her Schedule J, Tirzah Hamilton lists having two daughters, ages 4 and 5—exactly the same as the two daughters listed by Debtor-Hayes. *Id.* at 28. Ms. Hamilton’s Schedule J also states that he pays nothing for clothing for herself and two daughters, spends only \$200.00 per month for food for a family of three, has \$0.00 transportation expense, and has \$0.00 for medical and dental expenses. *Id.* at 29.

In her bankruptcy case, Tirzah Hamilton filed a motion to dismiss the case (after the Plaintiff-Trustee began pursuing recovery of the fraudulent conveyance), in which Tirzah Hamilton stated (subject to the certifications of FED. R. BANKR. P. 9011):

- A. “Since filing bankruptcy, I have since obtained employment and would like to work to resolve my debt.”
- B. “In addition, since filing, there has been an error that was discovered within the original forms and documents filed. As I noted in the forms and stated I have not transferred or sold property that I believed to be legally in possession of.
- C. “Although I was signed a quit-claim deed for security of the agreement made between myself, the previous owner, and my children's father, Brian Hayes; the quit-claim deed was thought to have been ‘not legally recognizable’.”

This “not legally recognizable” appears to be a reference to the lender exercising its rights pursuant to a due on sales clause when Tirzah Hamilton acquired title to the property. *See* Answer, paragraph 2, in Adversary Proceeding, 16-9012, Dckt. 10. The deed asserted to not being “legally recognizable” in the Adversary Proceedings was from Valerie Tan to Tirzah Hamilton.

- D. “The provisions between the lien holder, Wells Fargo, and the previous owner restricted any transfer of the property, and the lien holder did not consent to any such transfer, therefore making the quit-claim deed legally invalid.”

It appears that the position asserted by Debtor-Hayes and Tirzah Hamilton is that a due on sales clause extinguishes the right of an owner of property to transfer or alienate the property.

16-90513; Motion to Dismiss, Dckt. 30.

In the Adversary Proceeding Defendant Tirzah Hamilton failed to comply with discovery, resulting in the court issuing an order compelling such compliance. 16-9012; Order, Dckt. 62. Ms. Tirzah’s explanation for not complying with the required discovery was based on advice that she received from Debtor-Hayes’s counsel. The court’s ruling states:

Tirzah Hamilton, the Debtor who made the transfer challenged by the Chapter 7 Trustee in this Adversary Proceeding appeared at the hearing. **She explained to the court that her boyfriend, Defendant-Brian Hayes, said that he talked to his attorney, and his attorney told him that Debtor did not have to comply with the discovery** requests issued by the Trustee because Debtor’s boyfriend has filed a Chapter 13 bankruptcy case in this District. Based on the advice of her boyfriend, Debtor did not respond to the discovery. Debtor did not contact counsel for the Trustee to notify him that she would not be responding based on the advice of her boyfriend. This discovery motion ensued.

16-9012; Civil Minutes, Dckt. 58. It may well appear, and be, that this bankruptcy filing is merely a “special defense” being advanced by Debtor-Hayes and Tirzah Hamilton to try to improperly derail the federal judicial process in the Adversary Proceeding, Debtor-Hayes having failed in thwarting the Plaintiff-Trustee’s discovery in the Adversary Proceeding. Debtor-Hayes’s “advice” to Tirzah Hamilton has resulted in her incurring a new debt of \$1,920.00 to the Plaintiff-Trustee for the legal fees and expenses caused by Debtor-Hayes’s “advice” not to comply with discovery. *Id.*; Order to Compel Discovery, Dckt. 62.

The court finds that the nature of the Adversary Proceeding warrants relief from stay for cause. Discovery as begun already, and the determination of whether property was fraudulently conveyed to Debtor-Hayes in this case will impact how this and the Hamilton bankruptcy case proceeds.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Plaintiff-Trustee to continue the Adversary Proceeding. The automatic stay is not modified with respect to enforcement of the judgment against Debtor-Hayes, the Plaintiff-Trustee, or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Irma Edmonds (“Plaintiff-Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Brian Hayes (“Debtor-Hayes”) to allow Irma Edmonds, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Edmonds v. Hayes, et al*, Case No. 16-09012, to avoid the transfer and administer the property at issue in the Hamilton bankruptcy case (16-90513), if the judgment is obtained by Plaintiff-Trustee in the Adversary Proceeding.

No other or additional relief is granted.

2.	<a href="#"><u>17-90220-D-13</u></a> SSA-2	<b>BRIAN HAYES</b> <b>Brian Haddix</b>	<b>OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS</b> 5-11-17 <a href="#"><u>[33]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The hearing on the Objection to Claimed Exemptions is continued to <b>xxxx, 201x</b>.</b>
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Irma Edmonds, the Chapter 7 Trustee in Case No. 16-90513, (“Plaintiff-Trustee”) objects to Brian Hayes’s (“Debtor”) claimed exemption pursuant to California Code of Civil Procedure 704.730 in the amount of \$46,364.05 for real property located at 2401 Walnut Park Drive, Modesto, California (“Property”). The Plaintiff-Trustee argues that Debtor cannot claim an exemption in property a trustee is pursuing in an adversary proceeding against him under 11 U.S.C. § 548 based upon a clear reading of 11 U.S.C. § 522(g).

The Plaintiff-Trustee argues that Debtor has not adequately disclosed the nature and extent of the adversary proceeding to third-party creditors on Statement of Affairs question No. 9, which asks if Debtor was a party to any lawsuit, court action, or administrative proceeding within the one year before filing for bankruptcy. Debtor answered:

Irma Edmonds Chapter 7 Trustee of  
Bankruptcy Estate of Tirzah Hamilton v.  
Brian Hayes and Delores Dianne Hamilton and  
Valerie M. Tan 16-90513 Civil

The Plaintiff-Trustee reports that the adversary proceeding case number is actually 16-09012, not the number that Debtor reported—which is the bankruptcy case number for Tirzah Hamilton. Also, the Trustee objects to classification of the suit as “Civil,” because that description does not convey to creditors that the suit is based upon a claim of fraudulent conveyance.

The Plaintiff-Trustee states that under 11 U.S.C. § 522(g), a debtor can exempt property in the following manner:

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property **that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title**, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) **such transfer was not a voluntary transfer of such property by the debtor**; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

The Plaintiff-Trustee notes that 11 U.S.C. § 548 is not listed in the above Code provision. The Plaintiff-Trustee argues that the transfer that is the subject of the adversary proceeding was a voluntary transfer between the parties by a grant of deed, not an involuntary transfer.



## DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 30, 2017. Dckt. 46. Debtor argues that 11 U.S.C. § 522(g) does not apply to this bankruptcy case, distinguishing that the section applies when a trustee recovers property. Debtor argues that without trustee recovery, Debtor cannot use the section. *See Glass v. Hitt (In re Glass)*, 60 F.3d 565 (9th Cir. 1995).

Debtor argues that the Plaintiff-Trustee does not possess trustee powers to avoid in this case, and instead, she is in the same position as other unsecured claims. Additionally, Debtor argues that there is no transfer—voluntary or involuntary—by Debtor that can be avoided (the actual issue which must be determined the Adversary Proceeding, not merely by Debtor).

## DISCUSSION

In opposition to this Objection to Claim of Exemptions, the court notes that Debtor relies upon *Glass v. Hitt (In re Glass)* for the proposition that a trustee must take some kind of action for a debtor to use 11 U.S.C. § 522(g). That assertion is an incomplete and misleading reading of *Glass*. The Ninth Circuit in that case stated that “[t]he filing of [an] objection containing the threat to use avoidance powers which resulted in the reconveyance of the property to the estate was ‘some action.’” *Glass*, 60 F.3d at 569 (quoting *In re Snyder*, 108 B.R. 150 (Bankr. N.D. Ohio 1989)). That court noted that there is “not a lot of difference between filing a complaint and filing an objection threatening to file a complaint,” but nevertheless, for this matter the Trustee has already initiated an adversary proceeding alleging a claim under 11 U.S.C. § 548 before this case was filed.

Prosecuting the adversary proceeding to reconvey the property that Debtor seeks to exempt in this case is sufficient action for 11 U.S.C. § 522(g) to apply. Reading the Code for its plain meaning, and considering the negative implication of 11 U.S.C. § 522(g), Debtor would not be able to exempt property in this case that the Trustee in another case recovered under 11 U.S.C. § 548.

Therefore, a ruling on this Objection is dependent upon whether the Trustee is successful in her adversary proceeding alleging that property possessed by Debtor in this bankruptcy case was part of a fraudulent conveyance by a debtor in another bankruptcy case (Tirzah Hamilton) such that it can be recovered for the bankruptcy estate in the other case.

The hearing on the Objection is continued to xxxx, 201x.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**201x.** **IT IS ORDERED** that the hearing on the Objection is continued to **xxxx,**